

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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PHILLIP GAY, #109431  
Petitioner,

vs.

RALPH HOOKS, et al.,  
Respondents.

2007 MAR -9 A 9:24

CASE NO.: 2:07-CV-164-WHA  
JUDY P. HACKETT, CLERK  
MIDDLE DISTRICT ALA

AMENDMENT TO  
PETITION FOR WRIT OF HABEAS CORPUS

Comes now the Petitioner, Phillip Gay, pro se and in response to Order of the Magistrate Judge, dated February 28, 2007, requiring the Petitioner to file an amended 28 USC §2254 habeas corpus petition, hereby submits the following claims relevant to the denial of the Motion for Reconsideration of Sentence filed under Alabama Criminal Code - Section 13A-5-9.1, (Acts 2001):

GROUND OF PETITION:

A] The State Court's interpretation and application of law, in denying the §13A-5-9.1 motion for reconsideration of sentence, is arbitrary to the intent of the Alabama Legislature in enacting §13A-5-9.1 and deprived the petitioner of his right to liberty in violation of the Fourteenth Amendment's Due Process and Equal Protection Clauses.

(Supporting FACTS):

Pursuant to §13A-5-9.1, supra, petitioner filed a motion

(cont.):

for reconsideration of sentence of life without Parole (LWOP), to a sentence of life-imprisonment and the early-release on parole. Accord; Ex Parte Kirby, 899 So.2d 968 (Ala. 2004). The §13A-5-9.1 motion alleged and showed that "the petitioner did not have a prior Class A felony conviction" and that "the petitioner is a non-violent offender," satisfying the requirements as prescribed, in Ex Parte Kirby, supra.

The Presiding Judge of the Coffee Circuit Court, and without requiring the District Attorney to respond to the §13A-5-9.1 motion and without requiring the Alabama Department of Corrections (D.O.C.) to submit an evaluation report, denied the §13A-5-9.1 motion on the ground that "The Defendant was convicted of a violent crime, i.e., Robbery First Degree, where one of the elements is being armed with a deadly weapon and in this case was a knife. — Therefore, this Court determines that the Defendant as a result of his conviction of Robbery First Degree is a violent offender." (Order of Judge Barr, dated 9/9/05).

The State Court's denial of the §13A-5-9.1 motion, based solely on the fact that "the Defendant was convicted for Robbery First Degree under §13A-8-41, supra," constitutes an abuse of discretion, plain error as a matter of law and is arbitrary to the intent of the Legislature in enacting §13A-5-9.1, supra.

The Alabama Legislature, in enacting §13A-5-9.1, did not determine any offense(s) to be prohibited from obtaining relief under §13A-5-9.1. Accord, Ex Parte Kirby, 899 So.2d at 968. The plain, clear and "mandatory" language of the "Act" affords relief to all persons convicted and sentenced under §13A-5-9(c)(3), (Acts 1980). Cf., Allen v. Board of Pardons, Montana, 482 U.S. 369 (1987).

(cont.):

A1: (Supporting FACTS):

There is nothing in the State Court's records which shows "that, there was 'actual-serious physical' injury or 'death' to a victim during the commission of the current offense or during the commission of a prior offense." Cf., Holt v. State [MS. CR-04-1250, March 3, 2006] — 50.2d — (Ala. Crim. App. 2005) (holding "The triggering offense of Robbery First Degree, under §13A-5-9(c)(3) (Acts 1980), is insufficient basis standing alone to deny relief pursuant to §13A-5-9, supra).

The State Court's conclusion, that "Defendant is a violent offender," is unsupported by the record, and deprived the petitioner of right to liberty in violation of Due Process and Equal Protection Standards.

Done this the 5<sup>th</sup> day  
of March, 2007.

NOTE:

Prepared with assistance  
of layman,  
(A. Malloy)

Submitted by:

Phillip Gay

PHILLIP GAY

Petitioner Pro Se

AIS NO. 109431

St. Clair Correctional Facility

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Springville, AL 35146-5582

PHILIP GAY #109431

[5-16-2A]

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